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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21 ..02..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.28 of 2000
and
C.M.P.No.292 of 2000

Raju Chettiar ..Appellant

Vs.

1.The District Collector,
Dindigul-Anna District,
Dindigul.

2. The Special Tahsildar (ADW),
Nilakkottai,
Dindigul-Anna District. ..Respondents.

PRAYER: Appeal filed against the order of the learned single Judge dated 17.12.1999 passed in W.P.No.4420 of 1996, as stated therein.

For Appellant :: Mr.S.Balasubramanian

For Respondents:: Mr.S.Kandaswamy, Spl. Govt. Pleader

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal has been filed against the impugned order of the learned single Judge dated 17.12.1999 passed in W.P.No.4420 of 1996.

2. Heard learned counsel for the parties and perused the records.

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3. The petitioner/appellant has challenged the notification dated 09.01.1996 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as the T.N. Act 31 of 1978) published in the District Gazette on 31.01.1996 pertaining to the land in Survey Nos.280/3, 280/6 and 282/1 to an extent of 0.92.5 Hectares in Silukkuvarpatti Village, Nilakkottai Taluk, Dindigul Anna District for providing house sites to the Adi-Dravidars of old Silukkuvarpatti Village.

4. It appears that initially the land was sought to be acquired by invoking the provisions of the Land Acquisition Act, 1894, which is a Central Act. After completing the enquiry under Section 5A of the Central Act, but before passing an award under Section 11 of the Central Act, the respondents switched over to the provisions of T.N. Act 31 of 1978. It appears that the District Collector authorised the Special Tahsildar, the 2nd respondent herein, under Section 4(2) of the T.N. Act 31 of 1978 to conduct an enquiry, and the Special Tahsildar had also conducted the enquiry in which he afforded an opportunity of hearing to the appellant, who submitted his objections to the acquisition of land on 03.11.1995. It is alleged that thereafter the declaration under Section 4(1) of the T.N. Act for acquisition of the said land was issued on 09.01.1996 and published in the District Gazette Extraordinary Issue of No.1 of the Dindigul Anna District on 31.1.1996.

5. It is alleged by the appellant that before issuing the declaration under Section 4(1) of the T.N. Act the District Collector should have given an opportunity of hearing to the appellant and should have supplied a copy of the Special Tahsildar's Report on the basis of which he issued the declaration under Section 4(1) of the T.N. Act.

6. However, the learned single Judge has in our opinion rightly held that in view of Section 22 of the T.N. Act there is no need to conduct a further enquiry under Section 4(2) of the T.N. Act.

7. The learned counsel for the appellant relied on the decision of a Division Bench of this Court in Tmt.Pushpa Bai Bainsingh Vs. District Collector Tirunelveli Kattabomman District & Others, 1998 (1) CTC 281, wherein the acquisition was set aside on the ground that the District Collector did not give an opportunity of hearing to the petitioner therein after receiving the report of the Tahsildar. In our opinion, the said decision is distinguishable because in that case no proceedings under the Land Acquisition Act, 1894 (Central Act) had been taken, but in the present case it is not disputed that

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initially the proceedings were commenced under the Land Acquisition Act, 1894 (Central Act). Hence, in view of Section 22 of the T.N. Act 31 of 1978 no further opportunity of hearing by the District Collector is required. Section 22 of the T.N. Act 31 of 1978 states

> "Sec-22(1) The provisions of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter in this section referred to as the said Act) but no award has been made by the Collector under Section 11 of the said Act before such commencement, as if –
>
> (i) The notification published under sub-Section (1) of Section 4 of the said Act, or
>
> (ii) The declaration made under Section 6 of the said Act, or
>
> (iii) The notice given under sub-Section (1) of Section 9 of the said Act,
>
> were a notice to show-cause against the acquisition of the land served under sub-Section (2) of Section 4 of this Act.
>
> (2) Nothing contained in sub-Section (1) shall apply in relation to any land unless and until after the District Collector has published a notice in the District Gazette to the effect that the said land is required for the purpose specified in sub-Section (1) of Section 4 of this Act."

8. A perusal of Section 22 of the T.N. Act makes it clear that where the proceedings for land acquisition have been started under the Land Acquisition Act, 1894 (Central Act) before the commencement of the T.N. Act, but no award has been passed under Section 11 of the Central Act, if notification under Section 4(1) or declaration under Section 6 of the Central Act have been published then it will be deemed that this will amount to a show cause notice under Section 4(2) of the Tamil Nadu Act. Thus, Section 22(1) incorporates a deeming provision, or a legal fiction which cannot be ignored by the Court. Legal fictions are well known in law.

9. In Commissioner of Commercial Taxes, Ranchi and Another Vs. Swaran Rekha Cokes and Coals (P) Ltd., and Others, (2004) 6 SCC 689 (vide para-29) the Supreme Court has followed the oft-quoted passage of Lord Asquith in East Dwellings Co. Ltd., Vs. Finsbury Borough Council, (1951) 2 All ER 587 at page-589

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> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

10. Thus, a notification under Section 4(1) of the Land Acquisition Act, 1894 must be treated as a show cause notice under Section 4(2) of the Tamil Nadu Act. Hence, it cannot be said that no notice was given by the District Collector under Section 4(2) of the Tamil Nadu Act.

11. Since, we hold that there is no requirement on the District Collector to give a fresh show cause notice in view of the Section 22 of the T.N. Act, consequently, there is also no requirement for him to furnish a copy of the report of the Special Tahsildar to the petitioner/appellant before issuing the declaration under Section 4(1) of the T.N. Act.

12. Apart from the above, we may further mention that the decision of the Division Bench of this Court in Tmt.Pushpa Bai Bainsingh Vs. District Collector Tirunelveli Kattabomman District & Others, 1998 (1) CTC 281 has been considered by a learned single Judge of this Court in S.Sannasi and 2 Others Vs. Abdul Waheed and 6 Others, 2000 Writ LR 559 and it has been held therein that the decision in Tmt.Pushpa Bai Bainsingh's Case (Supra) is confined to the facts of that case. We agree with the said view of the learned single Judge.

13. In our opinion, if the District Collector has authorised some other officer under Section 4(2) of the Tamil Nadu Act and that officer has given an opportunity of hearing to the land holder, then it is not necessary that the District Collector must again given an opportunity of hearing to the said land holder. In our opinion, it is not the requirement of law that two opportunities of hearing should be given before the land can be acquired under Section 4(1) of the T.N.Act. In our opinion, if the District Collector has authorised some other officer to issue a show cause notice to the owner or to any other person under Section 4(2) of the T.N. Act and that officer authorised by the District Collector has held the enquiry and submitted a report to the District Collector, then it is not necessary for the District Collector to issue a second show cause notice or to furnish a copy of the report

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of that officer to the owner or other person concerned. All that is required is the District Collector should be satisfied under Section 4(1) of the T.N. Act that it is necessary to acquire the land for the purpose of Harijan Welfare Scheme. Thus, all that is required is that the District Collector's satisfaction should be based on perusal of the report of such other officer who was authorised by him under Section 4(2) of the T.N. Act, and it is not the requirement of law that the District Collector should issue a second show cause notice to the land owner and to furnish a copy of the report of the officer authorised by him to hold the enquiry under Section 4(2) of the T.N. Act. There is no allegation in the petitioner's affidavit filed in support of the writ petition that the District Collector's satisfaction was not based on the report of the Special Tahsildar.

14. It may be mentioned that the judgment of the Division bench in Tmt.Pushpa Bai Bainsingh Vs. District Collector Tirunelveli Kattabomman District & Others, 1998 (1) CTC 281(supra) is a very cryptic judgment of only one paragraph and the only reasoning given therein is as follows:-

> "Considering the fact that the appellant herein was not given an opportunity before passing the order by the Collector we set aside the order dated 17.2.1997 passed by the first respondent and direct the District Collector, first respondent herein, to pass an order in the above matter, after giving an opportunity of being heard to the appellant herein/petitioner in the writ petition.

15. Thus, there is no discussion at all in the aforesaid Division Bench judgment whether opportunity of hearing was again required to be given by the District Collector if it had already been given by the Tahsildar or other officer nominated by the District Collector under Section 4(2) of the T. N. Act. Hence, the aforesaid decision of the Division Bench in Tmt.Pushpa Bai Bainsingh's Case (supra) cannot operate as a precedent, and we agree with the learned single Judge that it was confined to the facts of that case.

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16. In result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The District Collector
Dindigul – Anna District
Dindigul.

2. The Spl. Tahsildar (ADW)
Nilakottai.
Dindigul-Anna District.

+ 1 CC to Mr.S. Balasubramanian, Advocate CC SR 7851

Pre-Delivery Judgment
in
W.A.No.28 of 2000

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